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1952

File No. O. Partnership
52

Legal Department

A. BRANCH

Subject:— Opinions under the Indian Partnership Act — 1932

File No. O. Partnership/52

557-A

C O N T E N T S.

Legal Department File No. O. Partnership /52

Sr.No.	R.I.No/O.No.	Subject	Pages.
		Opinions under the Indian Partnership Act, 1932.	
1.	O.No. 9516/7-6-52	Question whether there is any objection to registering the Bharat Chit, Fund Co. as a firm under Sec. 58 of the Act.	1-4
2.	O.No.15476/8-7-52	Question regarding adaptations to the Act, and in particular to the words in sec. 58(2) on the passing of the Constitution of India.	5-6
3.	O.No. 13892/26-8-52	Question whether a firm having no office in the state of B'bay but proposing to establish an office there, can insist on the registration by the Registrar of Firms of B'bay.	7-8
4.	O.No. 16875/13-10-52	Question whether the view that under section 59 of the Indian Partnership Act, 1932, when the Registrar is satisfied that the provisions of sec. 58 have been duly complied with, he has no option but to register the firm, is correct.	9-10.

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The question raised for the consideration of the M.L.A. is whether there is any objection to registering the Bharat Bima Fund Co. as a firm under section 58 of the Indian Partnership Act, 1932.

Sd/-
2-6-52

Sd/-
3-6

M.L.A. Minister Sd/-P.M.Lad
3-6

-3-

Office of the M.L.A.

Seen and passed on to the Development Department.

Sd/-P.M.Lad
4-6

O.C. Remembrancer of Legal Affairs.

U.O. to D.O.No. 9516 , dated the 7th June 1952.

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Office of the R.L.A.

It is true that on passing of the Constitution, India declared herself a Republic and has become a sovereign democratic Republic. It was however not considered necessary to omit or modify the words in sub-section (2) of section 58 of the Indian Partnership Act when the Adaptation of Laws Order of 1950 was made by the President under clause (2) of article 372 of the Constitution. Attention is invited to sub-section(3) of section 11 of the Indian Companies Act, 1913, which also contains similar words. It does not appear that the Central Government has so far made any change in that sub-section.

2. The restrictions on names placed by these provisions are intended for the purpose of preventing any misunderstanding likely to be created in the public mind by the use of the words specified therein that the concern enjoys a particular kind of patronage. So long as our association containues with the Commonwealth the use of the above-mentioned words is likely to give rise to such misunderstanding; and, therefore, the provision appears necessary.

Sd/-P.M.Lad

7-7-

O.C. Remembrancer of Legal Affairs.

U.R. to H.D.No.11276, dated the 8th July 1952.

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Section 58(1) of the Indian Partnership Act, 1932, provides that the registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is so situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating certain particulars (a) to (f). The form prescribed for such application contains similar items (a) to (e) as stated in section 58(1). It is clear from this provision that the Registrar has to register a firm provided an application is made in the proper form and the area in which the business of the firm is proposed to be situated lies within his jurisdiction. This is substantive right given by the section, whereas the delivery of a statement in the prescribed form is merely by way of procedure. It is true that the particulars mentioned in the section and included in the prescribed form do not contain a column as to the name of the place where the firm proposes to carry on business. That does not, however, affect the substantive right. So long as the statement is in the prescribed form and the place where business of the is proposed to be situated is within the jurisdiction of the Registrar, registration will have to be granted. It may be added that the correct interpretation of item (b), namely, place or principal place of business of the firm, is that where the place is only one, i.e., the place, it must be mentioned; but where there are more than one place of business of the firm, the principal place must be mentioned. Item (c) expects that the names of all other places where the firm carries on business have to be given. These items have no reference to the proposed place of business. The view taken by the Registrar is,

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therefore, not correct.

Sd/-P.M.Lad

22-8

O.C. Remembranc r of Legal Affairs.

U.H. to H.D.Fe. 13892, dated the 26th August 1952.

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Office of the R.L.A.

The R.L.A. is requested to advise whether the view expressed in the Home Department Office note dated 8-7-52 (p. 7-8 ante), that under section 59 of the Indian Partnership Act, 1932, when the Registrar is satisfied that the provisions of section 58 have been duly complied with, he has no option but to register the firm is correct.

2. Section 58 of the Indian Partnership Act, 193[illegible] provides inter alia that the registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be started, a statement in the prescribed form stating the particulars specified. Section 59 provides that when the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement. In this connection attention is invited to R.L.A.'s opinion No. 13892, dated 26-8-52, where the R.L.A. has observed that so long as the statement is in the prescribed form and the place where business is proposed to be situated is within the jurisdiction of the Registrar, registration is required to be granted. "The Registrar is merely a recording officer. So long as any statement or notice is given or made in the prescribed manner, he has no discretion but to record it in the Register of Firms (Vide Desai's Partnership Act, 1932, p. 273). The recording of the statement completes the registration of the firm. The view expressed in the Home Department note appears therefore to be correct.

Sd/- [illegible]ad

10-10

O.C. Remembrancer of Legal Affairs.

U.O. to H.D.No. 16875/A. dated the 13th October 1952.

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